
**MINUTES OF SYMMES TOWNSHIP BOARD OF ZONING APPEALS
REGULAR MEETING
MARCH 6, 2017**

The meeting was called to order at 7:00 p.m. Members of the Commission present were: Mr. Fowler, Ms. Harlow, Mr. Havill, Mr. Ruehlmann and Mr. Wolfe.

Also present were: Kevin McDonough, Township Law Director, Bryan Snyder, Hamilton County Zoning Inspector and Luanne Felter, Zoning Secretary.

All those that wished to provide testimony to the Board were sworn in by the Vice-Chairperson.

PUBLIC HEARING

MR. RUEHLMANN convened the public hearing for BZA 2017-01 for the Montgomery Community Church Telecommunication Tower at 11251 Montgomery Road.

MR. SNYDER stated that the Conditional Use request to allow a cell tower in a residential area was continued for 30 days to give the applicant time to submit additional information and give the Board an opportunity to seek legal advice. The Board was advised that it had the authority to hear the appeal.

The applicant originally submitted a plan to construct a 150-foot high three sided panel-style telecommunication tower but has revised the plans for a monopole design. Around the base of the tower would be a 3,000 square-foot lease area that would include a 240 square-foot equipment pad with a canopy cover and other equipment for the tower. The lease area would be accessed by a gravel driveway leading back to the proposed tower location from the rear of the existing church parking lot and would be enclosed by a 6-foot chain link fence with privacy slats.

In addition to the Staff Report presented at the last hearing, staff has prepared an Addendum Report based on the revised information submitted by the applicant and has the following revised findings:

Section 385(b) states that the proposed use and development shall not have an adverse effect upon adjacent property, or the public health, safety morals and general welfare. The proposed telecommunication tower would not likely have an adverse effect on the immediately adjacent uses which include a daycare, office building, a school and the existing church development. However, the tower would be visible to homes on Vicksburg Drive, Snider Road, Avant Lane and a single-family home on Montgomery Road. As part of the applicant's revised submittal, he has provided an article on how cell towers do not affect property values.

MR. RUEHLMANN wanted to know if there is any health issues associated with cell towers.

MR. SYNDER stated that the health requirements are determined solely by the Federal Communications Commission (FCC) and they have determined that the radio frequency does not have any effect on the general public. The FCC has also stipulated that health risks cannot be a determining factor for local Boards.

He continued with the following:

Section 393.1 (b) provides that if a telecommunications company proposes to place the telecommunications tower in an area zoned for residential use, the applicant must establish that it will have a minimum setback of 200 feet from the base of the tower or any guy wire anchors to the property line. The applicant has indicated that he moved the tower from the original location to keep the facility as far from actual abutting residences as possible in all directions. The revised plans now indicate a setback of 61.92 feet from the western property line and 64.25 feet from the southern property line. A setback variance is still required since the abutting property is also zoned "A" Residence. However, no homes will be directly impacted since it is occupied by an existing school development and there is a large buffer area. The distance to the closest residential property line on Vicksburg Drive would be approximately 385 feet while the distance to the closest property line of a home on Avant Lane would be approximately 960 feet.

Section 393.2(a) provides that the telecommunications company shall demonstrate, using the latest technological evidence, why the telecommunications antenna or tower must be placed in a proposed location in order to serve its necessary function in the company's grid system. Part of this demonstration shall include a drawing showing the boundaries of the area around the proposed location which would probably also permit the telecommunications antenna to function properly in the company's grid system. This area shall be considered the allowable zone. The original submission included aerial maps that did not include labels or titles. The revised submission includes aerials that have titles and labels though they don't exactly identify an "allowable zone." The "Verizon Search Ring" shown on the revised map indicates a ½ mile ring around the intersection of Montgomery Road and East Kemper Road with coverage maps at various heights that may show need for new service in this area. However, the demonstrated need is related to Advanced Wireless Services and not to basic phone services. No evidence has been submitted that phones do not work in this area even indoors and there has been no evidence submitted that the tower would not accomplish the service needs if located in compliance with the setback requirements of the Zoning Resolution.

Section 393.2(b) provides that if the telecommunications company proposes to build a telecommunications tower (as opposed to mounting the antenna on an existing structure), it is required to demonstrate that it has contacted the owners of nearby tall structures within the allowable zone, asked for permission to install the telecommunications antenna on those structures, and was denied for either non-economic reasons or that a clearly unreasonable economic demand was made by the property owner, based on prevailing market values. The applicant previously submitted a series of "Abutters Map" documents that showed nearby tall structures but was inconsistent with the project narrative. No revisions have been submitted to these maps. The revised response letter includes a statement that the surrounding structures at Kroger, Cincinnati Hills Christian Academy and Christ Hospital are below the design threshold of 140 feet and refers to a series of revised maps showing coverage at various heights. The map for a 55 foot height does indicate a far less coverage area than the proposed tower height. Based on the evidence submitted, it is likely that locating the tower on existing tall structures would not satisfy the stated service needs but revised and corrected maps would be necessary to ensure that this section has been addressed.

Section 393.2(c) provides that the applicant demonstrate that all reasonable means have been undertaken to avoid any undue negative impact caused by the "clustering" of telecommunications towers within an area zoned for residential use. The original map provided was difficult to read. The revised map shows that the nearest tower is a 110-foot flagpole-style tower near the northeast corner of Montgomery and East Kemper Road. The applicant states that it would not work because it is at capacity, not of sufficient height, lacks available ground space for associated equipment and would not be able to support modern wireless equipment. However, no evidence has been provided to support the claim of lack of

capacity or size of equipment. There are also three towers located on the opposite side of I-71, outside of the applicant's search area.

Section 393.2(d) provides that the Board may deny the application to construct a new telecommunications tower in an area zoned for residential use if the applicant has not made a good faith effort to mount the telecommunications antenna on existing structures. The radio frequency report submitted with the application and the project narrative both indicate that there are no other suitable existing structures on which the antenna can be mounted.

Section 393.2(e) provides that an applicant must demonstrate that technically suitable and feasible sites are not available in an area other than an area zoned for residential use and that the site is located in the least restrictive district that includes a technically suitable and feasible site. The response letter indicates that sites at Harpers Station, Harpers Point Racquet Club, the Symmes Township greenspace behind Harpers Station, a Duke Energy property, Cincinnati Hills Christian Academy, a property for sale by NAI Bergman and Harpers Crossing were considered and rejected, mostly for a lack of interest in leasing space by the property owner or lack of space on the property. However, no evidence of any attempt to contact these property owners has been submitted to support the claims.

Section 393.2(f) provides that the applicant shall demonstrate that the telecommunications antenna/tower is the minimum height required to function satisfactorily and to accommodate the co-location requirements and must be a monopole design. The revised plans indicate a change to a monopole design with stealth panels to screen the antenna from view. The applicant has submitted maps to indicate what coverage levels would be at 55 feet, 100 feet, 140 feet and 200 feet. However, there is no discussion or evidence that indicates why the coverage provided at 140 feet is necessary versus the coverage at 100 feet. A coverage map of the tower at the proposed height of 150 feet was also not included.

Section 393.2(g) provides that all telecommunications towers shall be fitted with anti-climbing devices as approved by the manufacturers. Furthermore, the applicant shall demonstrate that the proposed telecommunications tower and its antenna are safe and that the surrounding properties will not be negatively affected by tower failure, falling ice or other debris, electromagnetic fields or radio frequency interference. However, if the specific safety issue in question is determined to be regulated by either Federal Communications Commission (FCC) regulations or applicable building code regulations, and the operation or construction is in compliance with such regulations, then this requirement for safety shall be deemed to have been met. The proposed tower, if approved, would be required to receive a building permit and comply with all associated safety regulations at the time of construction. The applicant has indicated in the project narrative that as a condition of approval they would agree to remove the last 10 feet of climbing pegs and submit a radio frequency compliance report with the building permit application.

Section 393.2(h) provides that for reasons of aesthetics and public safety, telecommunications facilities shall be effectively screened on each site. Screening shall consist of a solid masonry wall or solid fence not less than four nor more than six feet in height and located not less than 30 feet for each property line. Spaces between any screening device and adjacent property lines shall be buffered by use of landscape plant materials including but not limited to grass, hardy shrubs, evergreen ground cover and maintained in good condition. The proposed tower location would be inside of a fenced area that would be located 30 feet from all property lines and would include privacy slats in the six foot high chain link fence. Existing natural screening is greater than four feet in height.

Section 393.2(i) provides that in order to reduce the number of telecommunications antenna support structures needed in the Township in the future, the owner of an existing

telecommunications tower shall not unreasonably deny a request to accommodate other uses, including other telecommunications companies and the telecommunications antenna of local police, fire and ambulance departments. The owner of an existing telecommunications tower may request reasonable compensation for the use of the telecommunications tower. For the purposes of encouraging co-location of cellular or wireless antenna and others uses telecommunications towers shall be designed, engineered and constructed 150 feet in height or taller to support telecommunications antennas installed by three or more telecommunications service uses which includes police, fire and ambulance departments. In addition, an applicant must demonstrate that the area acquired by lease or otherwise acquired for the use and construction of the telecommunications tower and accessory structures is sufficient in size to accommodate any additional structures that may be required if additional users are added to the telecommunications tower. The proposed telecommunication tower would be able to provide space for Verizon Wireless and up to three additional co-locations in compliance with this section.

Section 393.2(j) provides that the telecommunications company must demonstrate to the Township that is licensed by the Federal Communications Commission (FCC). No approval will be granted to any applicant unless proof of current FCC license for the proposed use of the telecommunications tower is provided. The applicant had not previously submitted any licensing information and has since provided a printout of what appears to be several FCC license pages on an internet website. The license documents are not clearly labelled. However, it is likely that a large telecommunication company like Verizon Wireless would be able to provide a clear license for the use of this site if it were approved.

Section 393.2(k) provides that if the telecommunications site is fully automated adequate parking shall be required for maintenance workers. If the site is not fully automated, the number of required parking spaces shall equal the number of employees working on the largest shift. All parking specifications and requirements shall be consistent with the applicable parking requirements as established in the Zoning Resolution. The revised site plan includes a gravel parking area and access drive without the required parking spaces.

Section 393.2(l) provides that telecommunications towers under 200 feet in height shall be painted silver or have a galvanized finish retained or be finished with a neutral color matching its background in order to reduce visual impact. As stated in the Staff Report, the original painted tri-pole design was originally proposed after discussion with the Zoning Administrator. The response letter seems to indicate that the revised monopole tower would include a matte galvanized finish in compliance with this section. The letter references revised photo simulations that were not included with the revised documents. The photo simulations would be necessary to gauge the need for the stealth panels outside of the individual antennae to screen them from view.

JESSE STYLES (2530 Superior Avenue, #303, Cleveland 44114) stated that a significant gap in coverage exists in Symmes Township. The existing sites are no longer able to provide reliable, uninterrupted wireless network service and customer demand is growing. Therefore, a new communication facility is required to remedy the deficiency. The proposed location will allow for the service antennas to be at an ideal elevation to provide coverage to a larger radius with minimal obstruction from natural terrain, buildings and trees while maintaining an appropriate distance from other towers. In order to increase capacity, they are seeking to provide Advanced Wireless Service (AWS) to increase bandwidth and provide faster peak speeds. The tower would be 140 feet with a 10-foot lighting rod with a matte galvanized finish and can include stealth panels. Photo simulations of the tower with and without stealth panels were provided prior to the meeting. We are willing to pave the access drive and parking area to be in compliance with the Zoning Resolution. As for the amount of parking spaces, the attendants will be coming during business hours for one hour or less so only one

or two spaces are needed. Finally, an FCC license and all regulatory documents will be provided as a condition of approval.

MR. SNYDER stated that a 150-foot tower plus 10-foot lighting rod is shown on the site plans.

MR. STYLES says he is willing to work with the Board on the height.

MR. RUEHLMANN wanted to know if the towers located south of I-275 can be extended.

MR. STYLES stated that the age of structures are too old to support the new equipment and it would be too costly to refurbish them.

MR. RUEHLMANN wanted to know if the proposed tower could be shorter or installed on powerlines.

MR. STYLES stated that they can only go so low because of mature vegetation and need to meet the co-location requirement. Antennas can be installed on powerlines but is not feasible due to accessibility.

MR. HAVILL stated that under 385(b) of the Zoning Resolution the proposed use and development shall not have an adverse effect upon adjacent property, public health, safety, morals and general welfare. He believes it is the Board's responsibility to protect the residents. He called the National Association of Realtors to inquire about property values. They told him that buyers would pay as much as 20 percent less for a property near a cell tower or antenna and referred him to an article in Realtor Magazine entitled "Cell Towers, Antennas Problematic for Buyers", a copy of which he provided. They also said a home is purchased on emotion.

MR. STYLES suggested that the article may be slightly misleading.

MR. HAVILL stated that he also called the FCC. The technician stated that the maps provided are only predictions. If you want a true indication of issues, you need to look at complaints. In the last 5-7 years they have received zero complaints in this quadrant.

MR. STYLES stated that if the average consumer has an issue they will complain to a salesperson not the FCC. He noted that they are trying to put an AWS network in place before issues arise.

RANDY BRUNK (11525 Snider Road, Cincinnati) stated that he is the headmaster of Cincinnati Hills Christian Academy. He has concerns about the proposed telecommunications tower being located so close to a school. Even though they claim there are no health risks associated with the tower it affects the parents and could be detrimental to their \$22 million dollar business.

CELIA CARROL (9979 Montgomery Road, Cincinnati) stated that she is a realtor for Sibcy Cline. She has found that potential buyers do not purchase homes near a cell tower for aesthetic or health reasons. They are considered "locational challenges."

SUSAN STEINHARDT (8387 Chesney Lane, Cincinnati) provided a signed petition from residents opposing the telecommunications tower. She stated that the proposed tower will be located too close to the property lines and is in conflict with current zoning guidelines. She believes that the tower will have a negative economic impact on the adjacent school and child care businesses. She suggested that Symmes Township consider an independent review for

the need for additional wireless service. Additionally she requests that Symmes Township amend current Zoning restrictions to prohibit cell tower construction within 1500 feet of schools, day care facilities and places of worship and send notice of hearing within 1000 feet in all directions considering the visual and financial impact of such structures.

MR. SNYDER stated that the petition could not be made part of the record because it is not notarized and cannot be considered sworn testimony.

MARK STEINHARDT (8387 Chesney Lane, Cincinnati) stated that he will be able to see the tower from his home on Chesney Lane and provided a large mockup of what it will look like.

JAMES HEWITT (11310 Avant Lane, Cincinnati) stated that his family room and daughter's bedroom will be facing the proposed telecommunications tower. Trees will not block the view. He believes that even if a home depreciates 10 percent it will be a significant impact.

BENNEDIX RODRIGUEZ (11446 Avant Lane, Cincinnati) stated that he is worried about the health issues that may arise from the telecommunications tower down the road.

LESLIE PRICE (11339 Avant Lane, Cincinnati) stated that she is in a unique position in that she is a resident, CHCA parent, active member of Montgomery Community Church and Verizon customer. However, she believes that the proposed telecommunication tower is too intrusive and will affect property values. Symmes is a premier residential community and the tower will not fit in with characteristics of the neighborhood. The school is the crown jewel of the community and attracts many homeowners. The tower could jeopardize their business. There are no other areas in Symmes Township that has this many kids in one small area.

JIM WHITTENBURGER (11222 Montgomery Road, Cincinnati) stated that he lives across the street from Montgomery Community Church. He has stayed awake at night worrying about the health impacts this tower will have on the children. He believes that the church is going to be making money at the expense of the populace.

MR. SNYDER stated that it is customary to provide the applicant a chance to rebut the testimony of opposition.

MR. STYLES declined and stated that the meeting has gone on too long.

MR. SNYDER reminded the Board that the FCC prohibits the Board from considering health risks in their decision process and does not want them to be in violation.

KEVIN MCDONOUGH (Wood & Lamping, 600 Vine Street, Suite 2500, Cincinnati) noted that the Board may deliberate behind closed doors, if they wish, but must vote in open session.

The Board agreed to deliberate in public.

MS. HARLOW stated that she is concerned that the proposed telecommunications tower will impact businesses and decrease property values.

MR. HAVILL stated that the wireless network service is fine in that area and doesn't feel there is a need for the telecommunications tower at this time. He also worries about home values decreasing.

MR. WOLFE stated that he has a concern about the size and location of the proposed telecommunications tower. He agrees that people buy homes on emotion and it can affect

property values. He noticed that there are no telecommunications towers in Indian Hill, Montgomery and Blue Ash and they don't seem to have any issues with wireless service. Also, the applicant stated that the telecommunications tower is needed to meet future demands. He thinks we should wait and address this issue down the road. Technology may even change.

MR. RUEHLMANN stated that the Zoning Resolution is specific. Cell towers are not allowed in residential areas unless they meet the criteria. He believes there are better locations to accommodate the tower. The applicant has not provided any evidence to dispute this claim.

MR. RUEHLMANN made a motion to approve the appeal.

MR. WOLFE seconded the motion and the roll call vote was as follows:

Mr. Fowler – ‘aye’, Ms. Harlow – ‘nay’, Mr. Havill – ‘nay’, Mr. Ruehlmann – ‘nay’ and Mr. Wolfe – ‘nay’

RESOLUTION

DISAPPROVING

APPEAL NO. 2017-01

WHEREAS, Strategis LLC, 2530 Superior Avenue #303, Cleveland, OH 44114, as agent for Crown Castle and Verizon Wireless, Appellant, on December 7, 2016, filed Appeal No. 2017-01 under Section 393.1 to 393.4 of the Zoning Resolution, requesting that a conditional use be permitted for a telecommunications tower to be located at 11251 Montgomery Road, Symmes Township, Hamilton County, Ohio; and

WHEREAS, public hearings were held on said appeal on February 6, 2017 and March 6, 2017, notice of such hearings were given by first class mail to parties of interest and also by publication in a newspaper of general circulation in the Township at least ten (10) days prior to the dates of said hearings in accordance with Section 519.15 of the Ohio Revised Code; and

WHEREAS, objections were filed pursuant to O.R.C. 519.211(4) (a) objecting to the appeal and according to Section 54.1(c) of the Zoning Resolution, if a timely notice of objection is received and Sections 519.02 to 519.25 of the Ohio Revised Code apply to the telecommunications tower then an application shall be made in accordance with the regulations herein to the Symmes Township Board of Zoning Appeals; and

WHEREAS, Section 41 et seq. of the Zoning Resolution and the Symmes Township District Maps designate said premises to be in the “A” Residence District; and

WHEREAS, Article XXXV (Conditional Uses) provides, in part, that a Conditional Use may or may not be appropriate in a particular location depending on a weighing, in each case, of the public benefit against the local impact, the amelioration of any adverse impacts through special site planning, and development; and

WHEREAS, according to testimony offered at the public hearing, the appellant is requesting a Conditional Use to permit the construction of a telecommunications tower at Montgomery Community Church, 11251 Montgomery Road; and

WHEREAS, according to testimony offered at the public hearing, the subject property is located on the west side of Montgomery Road, north of Cornell Road and south of East Kemper Road; and

WHEREAS, according to further testimony offered at the public hearing, the applicant originally submitted a plan to construct a one hundred fifty (150) foot high three (3) sided panel-style telecommunication tower with a two hundred forty (240) square foot canopy covered equipment pad within a three thousand (3,000) square foot fenced-in area and accessed by a gravel drive. However, after the Board had concerns about the design style and the lack of adequate plans the Board continued the meeting for thirty (30) days; and

WHEREAS, according to further testimony offered at the public hearing, the applicant is now proposing to construct a one hundred fifty (150) foot monopole telecommunication tower with a two hundred forty (240) square foot canopy covered equipment pad within a three thousand (3,000) square foot fenced-in area and accessed by a gravel drive; and

WHEREAS, Sections 385 and 386 of the Zoning Resolution provide for the General Considerations and Specific Criteria pertaining to Conditional Uses and Sections 393.1 to 393.4 apply to telecommunications towers; and

WHEREAS, according to further testimony offered at the public hearing, the proposed telecommunications tower would be consistent with the spirit and intent of the Zoning Resolution in that such towers are permissible in areas zoned for residential use, provided that they comply with the additional standards contained within the Zoning Resolution; and

WHEREAS, there was some testimony offered at the public hearing, that the proposed telecommunications tower would not likely have an adverse effect on the immediately adjacent uses, including a daycare and office building to the south, a school use to the west, and the existing church development to the north and east. However, the one hundred fifty (150) foot high tower would be visible to homes on Vicksburg Drive, Snider Road, Avant Lane and a single-family home on Montgomery Road. However, there was additional testimony from residents and interested persons including the headmaster from Cincinnati Hills Christian Academy, a representative from Sibcy Cline Realtors, and several residents from Avant Lane that it would have an adverse impact upon adjacent property, including property values, or the public health, safety and general welfare of the community and therefore objecting to the Conditional Use; and

WHEREAS, according to further testimony offered at the public hearing, the majority of the church property, including the area of the proposed telecommunications tower, is designated as Public/Semi-Public/Institutional on the adopted Symmes Township Land Use Plan. However, the adopted plan does not contain any reference to telecommunications towers so the plan would not apply to the proposed development; and

WHEREAS, according to further testimony offered at the public hearing, the proposed telecommunication tower with concrete pad for equipment and fenced-in area and proposed gravel access drive complies with the specific criteria as follows:

Section 393.1 (b) provides that if a telecommunications company proposes to place the telecommunications tower in an area zoned for residential use, the applicant must establish that it will have a minimum setback of two hundred (200) feet from the base of the tower or any guy wire anchors to the property line. The applicant has moved the tower from the original location. The revised plans now indicate a setback of sixty one point ninety two (61.92) feet from the western property line and sixty four point twenty five (64.25) feet from the southern property line. A setback variance is still required since the abutting property is also zoned "A" Residence. However, no homes

will be directly impacted since it is occupied by an existing school development and there is a large buffer area. The distance to the closest residential property line on Vicksburg Drive would be approximately three hundred eighty five (385) feet while the distance to the closest property line of a home on Avant Lane would be approximately nine hundred sixty (960) feet. A tower located 200 feet from the southern property line as required by this section would be much closer to meeting the applicant's stated intent to place the tower as far from all surrounding residences as possible.

Section 393.1(c) provides that micro antennas not exceeding five (5) feet in height may be placed on any existing conforming buildings in any zoning district. This section is not applicable to the proposed telecommunication tower.

Section 393.1(d) provides that except for buildings, fences and parking areas essential to the operation of a particular telecommunications tower, all other uses accessory to the telecommunications antenna and towers including, but not limited to, business offices, maintenance depots, and materials and general vehicle storage, are prohibited from the site unless otherwise permitted in the zoning district in which the telecommunications antenna and/or tower is located. The proposed telecommunication tower would not include any of the above listed accessory uses.

Section 393.2(a) provides that the telecommunications company shall demonstrate, using the latest technological evidence, why the telecommunications antenna or tower must be placed in a proposed location in order to serve its necessary function in the company's grid system. Part of this demonstration shall include a drawing showing the boundaries of the area around the proposed location which would probably also permit the telecommunications antenna to function properly in the company's grid system. This area shall be considered the allowable zone. The original submission included aerial maps that did not include labels or titles. The revised submission includes aerials that have titles and labels though they don't exactly identify an "allowable zone." The "Verizon Search Ring" shown on the revised map indicates a one half (½) mile ring around the intersection of Montgomery Road and East Kemper Road with coverage maps at various heights that may show need for new service in this area. However, the demonstrated need is related to Advanced Wireless Services and not to basic phone services. No evidence has been submitted that phones do not work in this area even indoors and there has been no evidence submitted that the tower would not accomplish the service needs if located in compliance with the setback requirements of the Zoning Resolution.

Section 393.2(b) provides that if the telecommunications company proposes to build a telecommunications tower (as opposed to mounting the antenna on an existing structure), it is required to demonstrate that it has contacted the owners of nearby tall structures within the allowable zone, asked for permission to install the telecommunications antenna on those structures, and was denied for either non-economic reasons or that a clearly unreasonable economic demand was made by the property owner, based on prevailing market values. The applicant previously submitted a series of "Abutters Map" documents that showed nearby tall structures but was inconsistent with the project narrative. No revisions have been submitted to these maps. The revised response letter includes a statement that the surrounding structures at Kroger, Cincinnati Hills Christian Academy and Christ Hospital are below the design threshold of one hundred forty (140) feet and refers to a series of revised maps showing coverage at various heights. The map for a fifty five (55) foot height does indicate a far less coverage area than the proposed tower height. Based on the evidence submitted, it is likely that locating the tower on existing tall structures would

not satisfy the stated service needs but revised and corrected maps would be necessary to ensure that this section has been addressed. Revised and corrected maps were not submitted to ensure that this section has been addressed.

Section 393.2(c) provides that the applicant demonstrate that all reasonable means have been undertaken to avoid any undue negative impact caused by the “clustering” of telecommunications towers within an area zoned for residential use. The original map provided was difficult to read. The revised map shows that the nearest tower is a one hundred ten (110) foot flagpole-style tower near the northeast corner of Montgomery and East Kemper Road but the applicant states that it would not work because it is at capacity, not of sufficient height and also lacks available ground space for associated equipment and would not be able to support modern wireless equipment because the newer equipment is too large to be located inside the pole. However, no evidence has been provided to support the claim of lack of capacity or size of equipment. There are also three (3) towers located on the opposite side of I-71, outside of the applicant’s search area.

Section 393.2(d) provides that the Board may deny the application to construct a new telecommunications tower in an area zoned for residential use if the applicant has not made a good faith effort to mount the telecommunications antenna on existing structures. The radio frequency report submitted with the application and the project narrative both indicate that there are no other suitable existing structures on which the antenna can be mounted. There are still deficiencies in the evidence discussed above.

Section 393.2(e) provides that an applicant must demonstrate that technically suitable and feasible sites are not available in an area other than an area zoned for residential use and that the site is located in the least restrictive district that includes a technically suitable and feasible site. The response letter indicates that sites at Harpers Station, Harpers Point Racquet Club, the Symmes Township greenspace behind Harpers Station, a Duke Energy property, Cincinnati Hills Christian Academy, a property for sale by NAI Bergman and Harpers Crossing were considered and rejected, mostly for a lack of interest in leasing space by the property owner or lack of space on the property. However, no evidence of any attempt to contact these property owners has been submitted to support the claims.

Section 393.2(f) provides that the applicant shall demonstrate that the telecommunications antenna/tower is the minimum height required to function satisfactorily and to accommodate the co-location requirements and must be a monopole design. The revised plans indicate a change to a monopole design with stealth panels to screen the antenna from view. The applicant has submitted maps to indicate what coverage levels would be at fifty five (55) feet, one hundred (100) feet, one hundred forty (140) feet and two hundred (200) feet. However, there is no discussion or evidence that indicates why the coverage provided at one hundred forty (140) feet is necessary versus the coverage at one hundred (100) feet. A coverage map of the tower at the proposed height of one hundred fifty (150) feet was also not included.

Section 393.2(g) provides that all telecommunications towers shall be fitted with anti-climbing devices as approved by the manufacturers. Furthermore, the applicant shall demonstrate that the proposed telecommunications tower and its antenna are safe and that the surrounding properties will not be negatively affected by tower failure, falling ice or other debris, electromagnetic fields or radio frequency interference. However, if the specific safety issue in question is determined to be regulated by either Federal Communications Commission (FCC) regulations or applicable building code

regulations, and the operation or construction is in compliance with such regulations, then this requirement for safety shall be deemed to have been met. The proposed tower, if approved, would be required to receive a building permit and comply with all associated safety regulations at the time of construction. The applicant has indicated in the project narrative that as a condition of approval they would agree to remove the last ten (10) feet of climbing pegs and submit a radio frequency compliance report with the building permit application.

Section 393.2(h) provides that for reasons of aesthetics and public safety, telecommunications facilities shall be effectively screened on each site. Screening shall consist of a solid masonry wall or solid fence not less than four (4) nor more than six (6) feet in height and located not less than thirty (30) feet from each property line. Spaces between any screening device and adjacent property lines shall be buffered by use of landscape plant materials including but not limited to grass, hardy shrubs, evergreen ground cover and maintained in good condition. The proposed tower location would be inside of a fenced area that would be located thirty (30) feet from all property lines and would include privacy slats in the six (6) foot high chain link fence. Existing natural screening is greater than four (4) feet in height.

Section 393.2(i) provides that in order to reduce the number of telecommunications antenna support structures needed in the Township in the future, the owner of an existing telecommunications tower shall not unreasonably deny a request to accommodate other uses, including other telecommunications companies and the telecommunications antenna of local police, fire and ambulance departments. The owner of an existing telecommunications tower may request reasonable compensation for the use of the telecommunications tower. For the purposes of encouraging co-location of cellular or wireless antenna and other uses telecommunications towers shall be designed, engineered and constructed one hundred fifty (150) feet in height or taller to support telecommunications antennas installed by three (3) or more telecommunications service uses which includes police, fire and ambulance departments. In addition, an applicant must demonstrate that the area acquired by lease or otherwise acquired for the use and construction of the telecommunications tower and accessory structures is sufficient in size to accommodate any additional structures that may be required if additional users are added to the telecommunications tower. The proposed telecommunication tower would be able to provide space for Verizon Wireless and up to three (3) additional co-locations in compliance with this section.

Section 393.2(j) provides that the telecommunications company must demonstrate to the Township that it is licensed by the Federal Communications Commission (FCC). No approval will be granted to any applicant unless proof of current FCC license for the proposed use of the telecommunications tower is provided. The applicant has not submitted an FCC license for the use of the proposed tower but has agreed to provide it as a condition of approval.

Section 393.2(k) provides that if the telecommunications site is fully automated adequate parking shall be required for maintenance workers. If the site is not fully automated, the number of required parking spaces shall equal the number of employees working on the largest shift. All parking specifications and requirements shall be consistent with the applicable parking requirements as established in the Zoning Resolution. The revised site plan includes a gravel parking area and access drive without the required parking spaces. However, at the public hearing the applicant offered to pave the parking area and access drive in accordance with the Zoning Resolution.

Section 393.2(l) provides that telecommunications towers under two hundred (200) feet in height shall be painted silver or have a galvanized finish retained or be finished with a neutral color matching its background in order to reduce visual impact. The applicant shall demonstrate that the proposed telecommunications tower is the least aesthetically intrusive facility for the neighborhood and that all buildings and structures be architecturally compatible with the architecture of the adjacent buildings and structures. The revised plan depicts a monopole design with a matte galvanized finish with stealth panels.

Section 393.2(m) provides that a full site plan be required for all proposed telecommunication sites except telecommunications antennas to be placed on existing structures. The applicant has submitted site plans that include all of the required elements.

Section 393.4(a) provides that no telecommunications tower shall be permitted on any lot on which any non-conforming building or structure is located nor upon which any non-conforming use or activity is occurring without first obtaining a variance from the Township Board of Appeals. The existing church use on the property has been approved by the Board of Zoning Appeals and there are no nonconforming uses, buildings or structures existing on the site.

Section 393.4(b) provides that no telecommunications tower shall be constructed, replaced or altered without first obtaining the applicable building permit. The proposed telecommunication tower would be subject to building permit requirements, if approved.

Section 393.4(c) provides proof shall be provided by the applicant in a form satisfactory to the Board that the proposal has been approved by all agencies and governmental entities with jurisdiction and conforms to all applicable requirement of the Ohio Department of Transportation, the Federal Aviation Administration, the Federal Communication Commission or the successors to their respective functions. The applicant has submitted a Certificate of AM Regulatory Compliance related to AM broadcast stations and a Determination of No Hazard to Air Navigation from the FAA. The applicant has stated that all additional regulatory documents will be provided as a condition of approval.

Section 393.4(d) provides that any special Zoning Certificate issued under this Section shall be revocable and may be revoked after notice and hearing if any continuing condition of the Zoning Certificate has been violated and is not remedied within thirty (30) days of written notice from the Township Zoning Inspector. This will apply to the proposed tower if approved.

Section 393.4(e) provides that if it is determined that any provision of this Resolution is inconsistent with Section 519.211 of the Ohio Revised Code then the Resolution shall be interpreted and applied in a manner most consistent with Section 519.211. There are no known issues of inconsistency between the Zoning Resolution and ORC Section 519.211 and there is no “zoning exemption” as stated in the project narrative.

WHEREAS, Section 381 of the Zoning Resolution states that the Board may, in accordance with the procedures and standards set out in this Article, and other regulations applicable to the district in which the property is located, approve by resolution those uses listed as conditional uses in Table 35-1, in the Table of Permissible Uses or in any other part of this Resolution; and

WHEREAS, Section 383.6 provides that the Board shall approve the conditional use, approve the conditional use subject to further specified approvals or modifications necessary to achieve full compliance with all standards, or disapprove the conditional use; and

WHEREAS, this Board, after careful consideration of all the facts, testimony, all other evidence and the applicable provisions of the Zoning Resolutions and relevant law, the proposed plan does not comply with the standards and conditions set forth in the Zoning Resolution; and therefore the requested Conditional Use is hereby disapproved.

NOW, THEREFORE BE IT RESOLVED that upon consideration of the foregoing, the Symmes Township Board of Zoning Appeals does hereby disapprove the appeal for the Conditional Use to install a telecommunications tower at the proposed site in accordance with the authority granted in Zoning Resolution and does hereby determine that a Conditional Use and Zoning Certificate may not be issued to the appellant consistent with the terms set forth in this Resolution; and

BE IT FURTHER RESOLVED that all testimony, plats, plans, applications, minutes of the public hearing and other documents and data submitted be and are hereby made a part of this Resolution.

MR. RUEHLMANN convened the public hearing for BZA 2017-03 for the Grand Sands Volleyball development at 10750 Loveland Madeira Road.

MR. SNYDER stated the applicant is proposing to construct two new outdoor sand volleyball courts surrounded by netting and new outdoor lighting with less front yard setback than required at the existing Grand Sands Volleyball development. The property is located on the south side of Loveland Madeira Road, west of Lebanon Road and east of Cottonwood Drive. The new sand volleyball courts would be located between two existing sand volleyball courts on the west side of the property and three existing sand volleyball courts on the east side making a total of seven outdoor sand volleyball courts. They will be located approximately 30 feet from the right-of-way at its closest point and 40 feet from the edge of pavement of Loveland Madeira Road and surrounded by an 18-foot high net with a four foot black aluminum fence similar to what is located on the existing courts to provide a secured, fenced in outdoor area. Five new 25 foot tall matching light poles will be located in the middle of the existing lighted areas. A review of the site found that the restriped existing parking spaces do not appear to meet the dimensional requirements of the Zoning Resolution in terms of stall length and width and aisle width and a gravel parking lot to the west of the building was never approved. However, there is plenty of space on the property to pave an additional area as necessary and restripe the existing asphalt parking areas to comply with the Zoning requirements.

MR. RUEHLMANN wanted to know if the Township has ever received any complaints about lights or usage.

MR. SNYDER stated that they have not received any complaints. The location of the volleyball courts and light poles will be screened from view by existing streetscape landscaping. It is also located next to industrial and commercial uses and a vacant parcel is located across the street.

MR. RUEHLMANN wanted to know how many parking spaces are required.

MR. SNYDER stated that the addition of two new sand volleyball courts requires an additional 10 parking spaces on the property bringing the total required spaces to 75.

MR. HAVILL wanted to know if the Board can stipulate that the parking lot will be striped and paved in accordance with Zoning Resolution.

MR. SNYDER said that they could make it as one of the conditions.

BOB ROTHERT (Abercrombie & Associates Inc., 3377 Compton Road, Suite 120, Cincinnati) stated that the courts had to be designed in accordance with volleyball regulations that is why they are encroaching into the setback area. The elevation differs where the light poles will be located so they won't look 25 feet tall. The parking area will be brought into compliance with the Zoning Resolution.

MR. HAVILL had concerns about lights shining in driver's eyes on Loveland Madeira Road.

MR. ROTHERT stated that the light poles will have shields on them just like existing light poles.

MR. FOWLER made a motion to consider the following:

RESOLUTION
GRANTING
APPEAL NO. 2017-03

WHEREAS, Donald Martin, Jody Martin Inc., 1250 Neale Lane, Loveland 45140, appellant, on February 6, 2017, filed Appeal No. 2017-03 under Section 183 of the Zoning Resolution, seeking a variance from the literal enforcement of Section 104.1 of said Resolution as applied to the property located at 10750 Loveland Madeira Road, Symmes Township, Hamilton County, Ohio; and

WHEREAS, said appellant, on February 6, 2017, applied to the Symmes Township Zoning Inspector for a Zoning Certificate for the construction of two (2) new sand volleyball courts with less front yard setback than required; and

WHEREAS, said Zoning Inspector, on February 7, 2017, acting upon said application and the plats and plans submitted, refused to issue said Certificate, his reasons being based upon the maps and regulations of the Zoning Resolution; and

WHEREAS, a public hearing was held on said appeal on March 6, 2017, notice of such hearing was given by first class mail to parties in interest and also by publication in a newspaper of general circulation in the Township at least ten (10) days prior to the date of said hearing in accordance with Section 303.15 of the Ohio Revised Code; and

WHEREAS, Section 41 et seq. of the Zoning Resolution and the Symmes Township District Maps designate said premises to be in the "E" Residence District; and

WHEREAS, Section 104.1 provides, in relevant part, that there shall be a front yard having a depth of not less than fifty (50) feet; and

WHEREAS, according to testimony offered at the public hearing, the applicant is proposing to construct two (2) new outdoor sand volleyball courts surrounded by netting and new outdoor lighting with less front yard setback than required at the existing Grand Sands Volleyball development; and

WHEREAS, according to further testimony offered at the public hearing, the property is located on the south side of Loveland Madeira Road, west of Lebanon Road and east of Cottonwood Drive; and

WHEREAS, according to testimony offered at the public hearing, the (2) new outdoor sand volleyball courts would be located between two (2) existing courts on the west side of the property and three (3) existing courts on the east side making a total of seven (7) outdoor sand volleyball courts; and

WHEREAS, according to testimony offered at the public hearing, the two (2) new outdoor sand volleyball courts will be located approximately thirty (30) feet from the right-of-way at its closest point and forty (40) feet from the edge of pavement of Loveland Madeira Road; and

WHEREAS, according to further testimony offered at the public hearing, the two (2) new outdoor sand volleyball courts will be surrounded by an 18-foot high net with a four (4) foot black aluminum fence similar to what is located on the existing courts to provide a secured, fenced in outdoor area; and

WHEREAS, according to further testimony offered at the public hearing, five (5) new twenty five (25) foot tall matching light poles will be located in the middle of the existing lighted areas; and

WHEREAS, according to further testimony offered at the public hearing, the proposed addition of two (2) new sand volleyball courts requires an additional ten (10) parking spaces on the property bringing the total required spaces to seventy five (75). A review of the site found that the restriped existing parking spaces do not appear to meet the dimensional requirements of the Zoning Resolution in terms of stall length and width and aisle width and a gravel parking lot to the west of the building was never approved. However, there is plenty of space on the property to pave an additional area as necessary and restripe the existing asphalt parking areas to comply with the Zoning requirements; and

WHEREAS, according to further testimony offered at the public hearing, the location of the two (2) new outdoor sand volleyball courts and light poles will be screened from view by existing streetscape landscaping and is located next to industrial and commercial uses so it would not have an adverse effect on the surrounding area; and

WHEREAS, Section 184.2 empowers this Board to authorize, upon appeal, in specific cases, such variance from the terms of the Zoning Resolution, as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the Resolution will result in unnecessary hardship, and so that the spirit of the Resolution shall be observed and substantial justice done; and

WHEREAS, Section 185 provides, in exercising the above mentioned powers, the Board may reverse or affirm, wholly, or partly, or may modify the order requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all powers of the Officer from whom the appeal is taken; and

WHEREAS, it is the consensus of this Board, after careful consideration of all the facts, testimony, and evidence submitted, that the literal enforcement of the strict application of Section 104.1 of the Zoning Resolution will result in unnecessary hardship to the owners of the property in question and;

WHEREAS, the variation, in accordance with the following conditions, will not seriously affect any adjoining property owners or the general welfare; and

NOW, THEREFORE BE IT RESOLVED that upon consideration of the foregoing, the Symmes Township Board of Zoning Appeals does hereby grant a variance from the requirements of Section 104.1 of the Zoning Resolution in accordance with the authority granted in Section 184.6. Furthermore, the decision of the Zoning Inspector to deny the issuance of a zoning certificate for the reason that the application failed to comply with Section 104.1 of the Zoning Resolution is affirmed, but in accordance with the Authority of Section 185, the Board of Zoning Appeals, having granted a variance as stated above, hereby determines that a zoning certificate may be issued to the applicant consistent with the terms set forth in this Resolution; and

SUBJECT TO THE FOLLOWING CONDITIONS:

1. That, the proposed outdoor sand volleyball courts shall not be located any closer than thirty (30) feet from the right-of-way at its closest point and forty (40) feet from the edge of pavement of Loveland Madeira Road;
2. That, the existing outdoor sand volleyball courts shall be permitted to remain in the current location less than fifty (50) feet from Loveland Madeira Road as shown on the plats and plans submitted;
3. That, the five (5) new light poles for the proposed outdoor sand volleyball courts shall not exceed twenty five (25) feet in height and not be located any closer than fifty (50) feet from Loveland Madeira Road;
4. That, the light poles for the proposed outdoor sand volleyball courts shall be shielded to prevent the light from extending onto Loveland Madeira Road or the abutting properties;
5. That, the parking area for the entire property shall be paved and restriped according with the Zoning Code;
6. That, the proposed outdoor sand volleyball courts and light poles be constructed and located exactly as shown on the plats and plans submitted to this Board;
7. That, the proposed outdoor volleyball courts and light poles comply in all other respects with the Zoning Resolution and the lawful requirements of the Hamilton County Building Commissioner;
8. That, the Zoning Certificate and Building permit for the proposed outdoor sand volleyball courts and light poles be obtained within sixty (60) days and all work be completed within six (6) months from the date of adoption of this Resolution;
9. That, the proposed outdoor sand volleyball courts and light poles not be relocated or enlarged without the approval of this Board;

10. That, the proposed outdoor sand volleyball courts and light poles, once constructed, be maintained in a satisfactory condition at all times;

BE IT FURTHER RESOLVED that all plats, plans, applications and other data submitted be and are hereby made a part of this Resolution.

MS. HARLOW seconded the motion and the roll call vote was as follows:

Mr. Fowler – ‘aye’, Ms. Harlow – ‘aye’, Mr. Havill – ‘aye’, Mr. Ruehlmann – ‘aye’ and Mr. Wolfe – ‘aye’

ADMINISTRATIVE MATTERS

MR. HAVILL suggested that the Township schedule a training class on zoning procedures.

MR. SNYDER stated that he would look into it and get back to the Board.

MR. RUEHLMANN stated that the minutes of the October 3, 2016 minutes will be tabled again for lack of quorum.

ADJOURNMENT

MR. RUEHLMANN adjourned the meeting at 10:30 p.m.

Approved: _____
Luanne Felter, Secretary